

REMARKS/ARGUMENTS

This response and remarks are being made in response to a final rejection and are intended to place the application in condition for allowance or to place the application in better condition for appeal.

Applicant respectfully requests reconsideration of the present application in view of the reasons that follow.

A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

Claims 11-18 are now pending in this application, with claims 1-10 remaining withdrawn from consideration.

Rejections Under 35 U.S.C. § 103

Claims 11-15 and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ferris (U.S. Patent No. 3,019,763) in view of Smith (U.S. Patent No. 4,250,836). The Examiner alleges that Ferris “discloses a modular milking parlor comprising a frame base, plurality of upright members, at least one longitudinal support member and a plurality of milking stations...Ferris does not disclose four or more wheeled carriages...[and]...[f]urther Ferris does not teach the wheels being adjustably mounted so as to raise and lower with respect to the carriage body.” (Office Action, pages 3-4.) To remedy this failing of Ferris, the Examiner then alleges that Smith, “*within the analogous art of animal related trailers*,” teaches means for adjustably mounting the wheels.” (Office Action, page 4, emphasis added.) Further, the Examiner has alleged that “the Applicant has not disclosed that four or more carriages solves any stated problem or is for any particular purpose...” (Office Action, page 4.) Applicant respectfully traverse the rejection.

Applicant submits that the Examiner has failed to establish a *prima facie* case of obviousness. As stated in M.P.E.P. § 2143:

In order to “establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

Applicant respectfully asserts that the Examiner has not established that Ferris or Smith, alone or in combination, suggests or would motivate one of skill in the art to modify Ferris to teach all of the claim limitations, and furthermore, to modify Ferris as the Examiner has suggested, one could have no expectation of success in arriving at the presently claimed invention. Applicant points to several grounds to support these assertions.

First, Ferris fails to teach or suggest all the claim limitations. Applicant stands by the remarks of record regarding the Examiner’s characterization of the axle of Ferris’ mobile milk house and milk room, which “embodies a trailer, truck, or the like for highway travel,” (Ferris, col. 1, lines 23-24) as being “detachable,” or “temporary.” Such remarks of record by the Applicant, have been proffered in responses filed on 8/26/04, 1/24/05, and 2/10/06. The Examiner has repeated that the axle of a semi-trailer is “detachable” and “temporarily connected” to the trailer, however, Applicant believes this position to be untenable in view of the oft-repeated maxim that “the claims are to be read in light of the specification.” The Applicant has noted repeatedly that the specification and claim language itself provides ample guidance as to the meaning of the terms “carriage,” “temporarily connected,” and “detachable,” as those terms are used in claims 11 and 12 which recite in part, “a plurality of wheeled *carriages temporarily connected* to the milking parlor frame, each carriage being *detachable*.” Ferris supports an “entirely new concept by performing the entire milking operation for a plurality of farms in a local area” (Col. 1, lines 8-10) whereby the “concept” has “all the necessary equipment self-contained” (Col. 1, lines, 39-40) in a “trailer having a platform or floor defin[ing] an enclosure for the platform.” (Col. 2, lines 28-32). Ferris also states that the concept is for “highway travel” (Col. 1, lines 23-24). The wheeled carriages of the present disclosure are in no way suited to routine highway travel.

Second, the present claims are not directed a trailer, contrary to the Examiner's allegations of analogous art. In the Office Action, the Examiner alleges that Smith tries to fill the obvious void of Ferris relating to the "carriage body and means for adjustably mounting wheels to the carriage body so that the wheels can be moved up and down with respect to the carriage body," by stating that Smith is "*within the analogous art of animal related trailers,*" and teaches means for adjustably mounting the wheels." (Office Action, page 4.) Applicant respectfully submits that Applicant's disclosure is not an animal related trailer, or even a 'trailer,' which is exactly what Ferris and Smith are concerned with. As the term 'trailer' is defined in the American Heritage Collage Dictionary, Third Edition, a trailer is "a large transport vehicle designed to be hauled by a truck or tractor." The modular parlor, of the present disclosure, is transportable on wheels by being "pushed or pulled, as supported by the wheeled carriages, from the factory floor to the loading dock and preferably directly onto the bed of a flatbed truck that is at the same level as the loading dock...The modular parlor is secured to the bed of the truck and transported to the dairy where it is to be installed." (Specification, paragraph 25.) Hence, the parlor *is not a trailer*; it may be transported *on a* trailer or flatbed truck, but it is not a trailer.

The trailer of Ferris is exactly what is embodied by the term 'trailer' as conventionally defined, and in fact, in Ferris, a truck (reference numeral 18) is even shown in FIG. 1. Ferris describes the trailer as the "*invention is to provide a mobile milking unit in the form of a milking room and milk house combination which is adapted to operate between farms in a local area consisting of an enclosed platform carrying stalls for cows and which may travel on a highway...whereby the entire milking operation may be performed by the mobile unit.*" (Col. 1, lines 57-62, emphasis added.) This directly bears on the Applicant's positions repeated in previous responses - that the axle in Ferris is an integral part of the milkhouse trailer and not a part that is 'detachable,' in the manner that the term is used in the present application. As recited in claim 11 the parlor further includes, in part, "a plurality of wheeled carriages temporarily connected to the milking parlor frame, each carriage being detachable from the milking parlor frame upon arrival of the frame at a destination..." The trailer of Ferris is meant to go from farm to farm, milking cows, and collecting the milk. The destinations of the Ferris trailer are the first farm, where the cows are milked, the second farm, where the cows are milked, and on and on, all to "handle the milking more quickly and efficiently." (Col. 1, line 18). In view of the quick and efficient qualities of the Ferris apparatus, to remove the axle at each destination, as the

Examiner suggests is within the skill of one in the art, would completely and utterly defeat the purpose of the Ferris apparatus, contrary to the requirements of M.P.E.P § 2143.01(V) as pointed out in Applicant's response filed 2/10/2006. The Examiner responds to the Applicant's remarks in paragraph 1 of the Office Action, stating the "Applicant has not argued the fact that the axle mechanism is an integral structure not capable of detaching." Applicant does not dispute that an axle *may* be removed from a trailer, Applicant has argued and definitively shown that the Examiner has failed to read the claims in light of the specification and is drawing on presumptions that one of skill in the art would not presume. To act as the Examiner alleges is within one of skill in the art, is akin to a truck driver going from stop to stop and at each stop removing the axle of his semi-trailer, loading/unloading the cargo, reattaching the axle, and returning to the open road to travel to the next destination. This is not an assumption that the person of ordinary skill in the art would ever make, nor would any truck driver ever perform.

Third, in regard to the Examiner's allegation that "the Applicant has not disclosed that four or more carriages solves any stated problem or is for any particular purpose...", Applicant respectfully disagrees. As stated in claim 11 and claim 12, from which claims 13-18 all depend, provided are "a *plurality of wheeled carriages* temporarily connected to the milking parlor frame, each carriage being detachable from the milking parlor frame upon arrival of the frame at a destination and having a carriage body and means for adjustably mounting wheels to the carriage body so that the wheels can be moved up and down with respect to the carriage body." Paragraph 25 of the disclosure, in describing FIG. 4, shows five wheeled carriages, explaining:

A particular advantage of the adjustable-height wheeled carriages 60 is *that changes in the elevation of the terrain over which the modular parlor is being transported can be readily accommodated without requiring lifting of the entire modular parlor by a forklift or other external mechanism.* For example, if the modular parlor must go over a curb or other small change in elevation, the leading end wheels 73 can be drawn upwardly to a point where one or more of the wheels is above the level of the curb, allowing the modular parlor to be pushed to position where those wheels are all above the curb, after which the wheels can be lowered to provide support for that end of the modular parlor. The other set of leading wheels can be drawn up in a similar manner to allow them to clear the curb and then be driven back down to provide support for the

modular parlor. A similar procedure can be used with all of the other wheels 73 on the other carriages 60. Similar adjustment of the height of the wheels can be used to accommodate rough terrain such as potholes or cracks in concrete, etc.

(Emphasis added.) This section of the Applicant's disclosure goes directly to show that there are distinct advantages of having a plurality of detachable wheeled carriages when trying to move the parlor through a barn, milk house, or other unevenly surfaced area. The plurality of wheeled carriages allows one or two individuals moving the parlor to go over obstacles by raising and lowering individual wheels, without physically lifting the parlor. The mobile milking house of Ferris teaches that the trailer containing the enclosed, self-contained milking equipment, is supported by wheels 17, illustrated in FIGS. 1, 2, and 4 as a single, wheeled axle for the trailer. Thus, Ferris fails to provide any suggestion or teaching of a plurality of wheeled carriages. Smith teaches, a trailer having two wheels that may "be raised or lowered with respect to base 14 to accomplish the objectives of the present invention." Col. 4, lines 63-66. Not only does this not accomplish the advantage of having the plurality of wheel carriages as shown above, but to operate the Smith trailer as described for the Applicant's parlor, would actually defeat the purpose of the Smith trailer, again contrary to the requirements of M.P.E.P. §2143.01(V). In Smith, when one wheel is raised, the trailer is lowered "where the base is resting on the ground whereby the livestock can walk on the base." Col. 2, lines 27-28. As recognized by one of skill in the art, the raising of one wheel will immobilize Smith's trailer so that it cannot be moved on the wheel remaining on the ground. In the Applicant's disclosure, when one wheel is raised, multiple wheels are still supporting the parlor and allow for its movement of the raised wheel over an obstacle such as a curb, where each wheel may then be raised over the obstacle in turn. Ferris and Smith, alone or in combination, simply do not provide "a plurality of wheels that are detachable...and means for adjustably mounting wheels to the carriage body so that the wheels can be moved up and down with respect to the carriage body," while allowing for operation of the unit as described in the specification. As stated by the Examiner in paragraph 2 of the Office Action, "[i]f the prior art structure is capable of performing the intended use, then it meets the claim." As shown by the Applicant, the prior art structure is grossly *incapable* of performing the intended use, and therefore, it *cannot* meet the claim.

Regarding claims 13 and 14, Applicant stands by the remarks of record as submitted in the response filed 2/10/2006. In paragraph 3 of the Office Action, the Examiner appears to allege that because the Applicant has not previously taken exception to the Examiner's rejections of claims 13 and 14, that the Applicant has, through prosecution history, supported such rationale. The statement by the Examiner is a mischaracterization of the Applicant's prior responses.

Applicant points out that, as required by M.P.E.P. § 714.02, each and every ground of rejection has been replied to. In the Office Action mailed on 6/21/04, the Examiner rejected claims 13 and 14 on pages 3 and 4. In Applicant's response filed on 8/26/04, Applicant made remarks regarding why independent claim 12, from which claims 13 and 14 depend, was patentable over the cited references due to missing elements in the cited references. The Applicant then stated that the cited references "fail to teach or suggest all of the claim limitations of claims 11-17 because they fail to teach or suggest [a] 'plurality of wheeled carriages' with detachable wheels, as required by all of these claims." (Applicant's response filed 8/26/04, page 8.). Thus, because each of claims 13 and 14 required the elements of claim 12, and as the cited references did not teach those elements, Applicant did not need to reach the specific remarks offered by the Examiner, but did address the range of claims 11-17 as being patentable over the cited art. In the next office action mailed on 11/23/04, the Examiner again reiterated the rejections of claims 13 and 14 (page 4). Again, Applicant pointed to deficiencies in the rejection of claim 12, from which claims 13 and 14 depend, and referred specifically to those claims as "the rejection of claims 11-15 and 17 cannot be maintained." (Applicant's response filed 1/24/05, page 9.) The Examiner next rejected claims 13 and 14, in the Office Action mailed on 5/4/05, page 4. The Applicant then filed a response on 8/25/05 removing the cited art of White as a reference by use of the Reisgeis Declaration, and thereby presumably defeating all standing rejections at that time. The Examiner next rejected claims 13 and 14, on newly cited art, in the Office Action mailed on 11/16/05, pages 3 and 4. This time, Applicant responded (response filed 2/10/06) by directly addressing the Examiner's rejection of claims 13 and 14. (Pages 9 and 10.). Now, the Examiner is alleging that the Applicant has support the rationale of the Examiner's rejection of claims 13 and 14, through prosecution history. As can be seen by the above synopsis of the prosecution history regarding claims 13 and 14, Applicant has met the burden each and every time to address each and every rejection made by the Examiner. As such,

Applicant respectfully requests that the Examiner fully consider the arguments regarding the rejections of claims 13 and 14 as presented in the response filed on 2/10/06.

Regarding claims 15 and 17, Applicant points out that those claims depend from claim 12, and therefore necessarily contain all the elements of claim 12. As shown above, the Examiner has failed to establish a *prima facie* case of obviousness with respect to claim 12, as Ferris in view of Smith fails to teach, suggest, or otherwise motivate one of skill in the art to modify Ferris to provide each and every element of the present claims. Therefore, Applicant respectfully submits that claims 15 and 17 are patentable over Ferris in view of Smith.

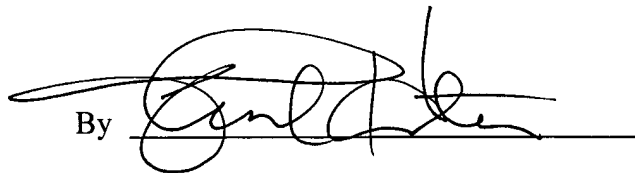
Claims 16 and 18 also stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ferris and Smith, and further in view of van der Lely (U.S. Patent No. 6,044,793). Applicant stands by the reasons of record as presented in the response filed on 2/10/06, as to why claims 16 and 18 are patentable over the cited art. The Examiner does not appear to indicate that those remarks were considered fully, and therefore Applicant requests that the Examiner consider fully those remarks and removed the noted rejections, as van der Lely fails to remedy the deficiencies of Ferris and Smith.

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested. The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

Respectfully submitted,

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By



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